

**REMARKS / DECLARATION FILED**

Claims 22 and 29-33 are pending in the application. Claims 1-21 and 23-28 have been cancelled. Previously presented claims 29-33 have been included, which depend on presently amended claim 22. No new matter has been added. Previously presented claims 30-32, which included two claims numbered as 30, have been renumbered as appropriate to reflect the pending claims. Applicants will assume that the Examiner's comments directed to claims 29-32 apply with equal force to renumbered claims 29-33.

Applicants respectfully request allowance of the pending claims in view of the remarks and inventor's declaration filed under 37 C.F.R. § 1.132 ("Berghof-Jaeger Declaration") presented herein.

**Claim Rejections – 35 U.S.C. § 112**

Claims 22 and 29-33 were rejected under 35 U.S.C. § 112 as allegedly failing to comply with the written description requirement. Preliminarily, the Examiner rejected claim 22 as potentially including new matter rejection, in the event Applicants did not agree with the Examiner's interpretation of the claim, as presented in the Office action dated April 16, 2008. Applicants, however, agree with the Examiner's interpretation of claim 22, so Applicants respectfully request that the Examiner withdrawn the new matter rejection for claim 22.

With regard to the Examiner's written description rejections, the Examiner maintained this rejection because the Examiner did not believe that the claimed limitations for the sequences used to detect all representatives of *Salmonella enterica* subspecies *enterica*, *salamae*, *arizonae*, *diarizonae*, *houtenae*, *bongori*, *indica* would be adequate to describe the relevant distinguishing characteristics for the *Salmonella* representative subspecies. The Examiner asserted that one of ordinary skill in the art would find "considerable variability" between the seven subspecies of *Salmonella enterica*. As support, the Examiner cited McClelland et al. (Nature, vol. 413, 2001, pp. 852-56) as allegedly providing that two *Salmonella* subspecies, *S. bongori* and *S. arizonae* share only 85% and 83% homology with the coding sequences of the complete *S. Typhimurium* LT2 chromosome.

As described more fully in the Berghof-Jaeger Declaration, one of ordinary skill would be able to practice the invention based on the information filed in the pending application. One of ordinary skill would know how to align sequences and compare different strains of *Salmonella* compared to SEQ ID NO: 1 in Holmes (WO95/00664) without an alignment of the chromosomes of the different *Salmonella* species. Holmes in particular disclosed a method to detect some *Salmonella* species by identifying a much longer DNA nucleotide sequence and specific sequences within that DNA sequence. A skilled artisan would recognize that an oligonucleotide does not need to be 100% complementary to a sequence to bind the sequence. With this in mind, the claimed stretches of nucleic acid molecules would be sufficient to detect the representatives of the seven *Salmonella* subspecies. Specifically, the particular number of successive nucleotides matching one of SEQ ID NOS: 1 to 5 would be sufficient to ensure that only hybrid double-stranded nucleic acids with respect to the *Salmonella* target sequences would be formed. The invention, moreover, is possible without undue experimentation, and yet is patentably distinct from its parent, issued as U.S. Patent No. 6,706,472, Holmes, and the prior art.

Therefore, Applicants request that the Examiner withdraw her 112 rejection in view of these remarks and the Berghof-Jaeger Declaration filed herein.

### **Double Patenting**

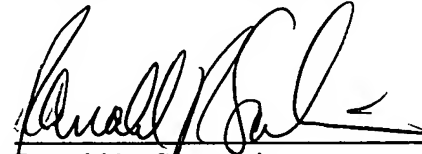
Claims 22 and 29-33 were rejected on the ground of nonstatutory obvious-type patenting as being unpatentable over claims 1-9 of U.S. Patent No. 6,706,472. Applicants request that this rejection be held in abeyance until patentable claims have otherwise been allowed.

**CONCLUSION**

Reconsideration and withdrawal of the previous rejections and a prompt and favorable examination on the merits are respectfully requested.

Respectfully submitted,  
FROMMER LAWRENCE & HAUG LLP

By:

A handwritten signature in black ink, appearing to read 'Ronald R. Santucci', is written over a horizontal line.

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